

REMARKS

Reconsideration is requested. Claims 1 and 4-9 remain in the application. Reconsideration is requested. Responsive to the Final Office Action of December 27, 2006, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Claim 1 has been amended to recite that "the water soluble tetrazolium salt is in a dry state" (support at, for example, page 3, lines 21-25 and page 9, lines 15-21 of the original disclosure).

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

Claim Rejections under 35 U.S.C. §103

The subject matter of claims 1 and 4-9 was rejected under 35 U.S.C. §103(a) as anticipated by Sock et al. (hereinafter "Sock").

Sock, as understood, describes the use of "transfer membranes," to which enzymes are transferred by a "blotting" from a gel (see the abstract and the final paragraph on page 310 of Sock). The blotting transfer is described as a diffusion-based or electrophoresis-based transfer (see final paragraph of page 310 and 3rd full paragraph on page 313 of Sock). In addition, the enzyme assays described by Sock utilize incubation of the transfer membranes in a liquid "reaction mixture" containing thiazolyl blue (see second full paragraph of right hand column on page 313 of Sock).

Amended claim 1 recites that the Claim 1 has been amended to recite that "the water soluble tetrazolium salt is in a dry state" (support at, for example, page 3, lines 21-25 and page 9, lines 15-21 of the original disclosure). Such a dry state is particularly beneficial in providing reagent test strips for use in a variety of settings including home testing (see, for example, page 1, lines 19-23 and page 11, lines 1-6 of the disclosure).

Sock does not appear to describe, teach or suggest the use of a dry state tetrazolium salt as recited in the current claims. Rather, Sock describes and teaches the use of thiazolyl blue in a buffered liquid reaction mixture (see second full paragraph of right hand column on page 313 of Sock). Sock notes that transfer membranes are incubated in such a liquid reaction mixture but does not describe, teach or suggest the use of a tetrazolium salt in a dry state as recited in current claim 1 (see again the second full paragraph of right hand column on page 313 of Sock).

For at least the foregoing reason, Applicants respectfully submits that independent claim 1 is allowable and not obvious over Sock. Since claims 4-9 depend from, and further limit independent claim 1, they are allowable for at least the same reasons.

Non-Statutory Double Patenting Rejection

The subject matter of claim 1 was rejected on the ground of nonstatutory obviousness-type double patenting over claim 9 of U.S. Patent No. 6,420,128 B1 (hereinafter the '129 Patent). Applicants are prepared to file a terminal disclaimer upon allowance if the subject matter of the allowed claims should so warrant.

CONCLUSION

Applicants respectfully request that, in light of the explanations above, the Examiner will reconsider and withdraw the rejections. Applicants respectfully submit that the claims are in condition for allowance. In the event that minor claim amendments are necessary to meet formal requirements, Applicants invite the Examiner to telephone the undersigned at direct dial 408 956-4790 so that issuance can be expedited.

The Commissioner is hereby authorized to deduct any fees that may be necessary, or credit any fees, to Deposit Account No. 10-0750 (LFS0214/MM)

Respectfully submitted,

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